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No. 86-1064

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MARIO M. CUOMO, Governor of the State of New York, and THOMAS A. COUGHLIN III, Commissioner of the New York State Department of Correctional Services,

Petitioners,

— vs. —

RICHARD J. KOEHLER, Commissioner of the New York City Department of Corrections; HARVEY PIERCE, JR., Warden, New York City House of Detention for Men; D. MICHAEL PEPE, CLAYTON JEMMOTT and JOHN KIERNON, Deputy Wardens, New York City House of Detention for Men; and EDWARD I. KOCH, Mayor of the City of New York, individually and in their official capacities,

Respondents,

— and —

JAMES BENJAMIN, MIGUEL GALINDEZ, BRUCE HAYES, JOSE SALDANA and ROBERT ESCHERT, detainees of the New York City House of Detention for Men, individually and on behalf of all other persons similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Petitioners seek a writ of certiorari to review four related holdings of the Court of Appeals for the Second Circuit which affect not only the parties to this action, but also state and local governments across the country, and which have serious

implications for the relationship between state and local governments and for the limitations of federal judicial power. The arguments raised by both the respondent City officials and the respondent pre-trial detainees in opposition to the petition in no way mitigate against granting certiorari.

Petitioners' first basis for seeking certiorari was that the court of appeals' holding that a state has a constitutional obligation for the conditions of confinement in local detention facilities warrants review. Respondent City officials simply ignore this contention. Respondent pre-trial detainees do not challenge the significance of this holding but rather contend that this was not the holding of the court of appeals but only dicta. Respondent pre-trial detainees contend that the court of appeals' true holding is nothing more than one that petitioners "stay out of the way" of the respondent City officials. Respondent Pre-trial Detainees' Brief in Opposition to Petition for a Writ of Certiorari (hereinafter Respondent Pre-trial Detainees' Brief) at 17, n. 11 and at 24, n. 15. In fact, however, the court of appeals stated in terms that unmistakably appear to form the basis of its decision, that the State cannot "wash its hands of its federal constitutional responsibility for the detention conditions of such [state sentenced] prisoners because they are temporarily housed in City facilities or because a New York statute requires the State to accept them 'forthwith'." App. A 10. If, however, the court of appeals held only that a federal court has jurisdiction to enforce what it perceives to be a state law claim against a state official whose actions impact upon a defendant's ability to comply with a judgment, regardless of whether that state official has engaged in any federal wrongdoing, such a ruling goes well beyond any ruling of this Court on the jurisdiction of federal courts. It is an open invitation to localities in states with a dual prison system to sit back, do nothing or not enough to meet their state law obligations to house inmates and then say it is the state which is responsible. Such a holding warrants review by this Court.

At the heart of petitioners' application is the principle that, under the Eleventh Amendment, a federal court can order relief against a state official only on the basis of a federal claim asserted

against that official after a finding that the state official has to the federal wrongdoing. *Green v. Mansour*, ____ U.S. ____, 106 S. Ct. 423 (1985); *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984); *Youngberg v. Romeo*, 457 U.S. 307, 319 n. 25 (1982); *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 419-20 (1977). Respondents argue that, despite the strictures imposed by the Eleventh Amendment, satisfaction of these requirements is not necessary. Rather, they contend that once a plaintiff has obtained a federal judgment against a defendant for violation of federal law, a district court has jurisdiction to order a third party, even a state official, to take whatever action the district court deems appropriate to facilitate or ease enforcement of that judgment. Respondent City Officials' Brief in Opposition to Petition for a Writ of Certiorari (hereinafter Respondent City Officials' Brief) at 34-36, 45; Respondent Pre-trial Detainees' Brief at 14-18.

Insofar as this can be read as an argument that once a federal court has jurisdiction over a claim, that jurisdiction permeates all other claims in the case, this very argument was rejected in *Pennhurst*, 465 U.S. at 122. Insofar as it can be read as an argument that once a federal judgment is entered in a case, that judgment imbues all claims relating to that judgment with federal jurisdiction, it is also erroneous, as a question arising under a federal court order does not arise under the "Constitution, laws or treaties of the United States." 28 U.S.C. § 1331; *Oklahoma ex rel. Wilson v. Blankenship*, 447 F.2d 687 (10th Cir.), *cert. denied*, 405 U.S. 918 (1971); *Prairie Band of Pottawatomie Tribe of Indians v. Puckkee*, 321 F.2d 767 (10th Cir. 1963); *New York State Association for Retarded Children, Inc. v. Carey*, 438 F. Supp. 440, 444 (E.D.N.Y. 1977).

The respondent City officials also argue, in large part, that certiorari should be denied because on the facts of the case, the State should be required to house state sentenced inmates within forty-eight hours of their becoming state ready. While the State takes strong issue with the City on the facts[1], the issues

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[1] The record establishes, not that the State is using the City system as an annex, but rather that whenever respondent City officials are unable to comply

(footnote continued)

concerning the facts are not a basis for invoking federal jurisdiction or for denying certiorari. Rather, consistent with the Eleventh Amendment, these issues should appropriately be considered only by a state court in deciding, under state law, New York Criminal Procedure Law § 430.20; *County of Nassau v. Cuomo*, 121 A.D.2d 428 (2d Dept. 1986), *aff'd*, ____ N.Y.2d ____ (1987); *County of Onondaga v. New York State Department of Correctional Services*, 97 A.D.2d 957 (4th Dept. 1983), *aff'd*, 62 N.Y.2d 826 (1984), what is a reasonable time within which petitioner Coughlin should accept custody of state sentenced inmates under New York State law. The issue petitioners ask this Court to consider is whether it is the State of New York, through its legislature and its courts, or a federal district court which decides who is responsible for these inmates.

(footnote continued)
with the consent decrees, they turn to petitioners to get them out of that difficulty by coming up with a new inmate category for which respondent City officials have responsibility and arguing that that category of inmate is now a State responsibility. Petition for a Writ of Certiorari at 5; App. J 12-15. Also, the City receives a decided preference over other localities in New York State who house state sentenced inmates for fourteen days after sentencing, Petition for a Writ of Certiorari at 15, n. 10, since the City, which now generally notifies the State to pick up inmates within one or two days of sentencing, houses its inmates for only three to four days under the forty-eight hour order. The result of the order is that the State has less time to plan for the reception of New York City inmates.

The facts regarding the number of beds added to the State and City systems do not support an argument that the equities are in the respondent City officials' favor. The City has lagged far behind the State in its construction of new beds. As of March 1986, the State, with an inmate population three times that of the City, had constructed 9,400 permanent beds, five and a half times as many as the 1,700 permanent beds built by the City. Since March 1986, the State has added some 3,400 beds to its system; 2,500 are under construction; and 1,500 additional beds have been budgeted. Officials recognize the need for another 3,500 which will be provided either through passage of determinate parole legislation or capital construction. Also, the facts proved in *Mitchell v. Cuomo*, 748 F.2d 804 (2d Cir. 1984), showed that the 600 beds closed at the Long Island Correctional Facility were specifically replaced at an alternative location.

(footnote continued)

Respondent pre-trial detainees also argue that the role of State law in this case does not bring it within *Pennhurst's* grip. They cite to a string of cases for the proposition that state officials can be ordered to conform their conduct to state law where necessary to vindicate a plaintiff's federal rights. None of these cases stand for that proposition, much less for the proposition that a federal injunction can be entered against a state official absent an allegation and finding that the official violated federal law.[2]

All respondents rely on *Tate v. Frey*, 735 F.2d 986 (6th Cir. 1984), for the proposition that the Eleventh Amendment is not a bar to the City's claim. Respondent pre-trial detainees also rely on this case for the proposition that there is no conflict among the circuits which have considered the issues raised by this case. To the extent that *Tate* conferred on State officials a constitutional responsibility for the conditions of confinement in local facilities, it is in accord with the holding of this court of appeals. This, however, does not weigh against the granting of certiorari. Rather, it establishes that this court of appeals' decision is neither isolated nor unique but instead illuminates these recurring issues which, because of their impact on the 45 states with dual prison systems, warrant review.

(footnote continued)

Despite this, State officials are not unmindful of the City's problems. At the City's request, the State has agreed to build and operate, at the City's expense, two seven hundred bed prisons. Even though the City could have made this request at any time in the past, it did not. Its failure to do so, or to come up with other solutions which would enable it to meet its obligations under the consent decrees, does not convert a local responsibility into a state responsibility.

[2] These cases stand for the proposition that a plaintiff's claim of federal wrongdoing is not vitiated either by the fact that plaintiff also has a claim of wrongdoing under state law, *Spruytte v. Walters*, 753 F.2d 498 (6th Cir. 1985), or the fact that state officials are alleged to have violated federal law which incorporates state law. *Smith v. Robinson*, 468 U.S. 992 (1984); *David D. v. Dartmouth School Committee*, 775 F.2d 411 (1st Cir. 1985); *Geis v. Board of Educ. of Parsippany-Troy Hills*, 774 F.2d 575 (3rd Cir. 1985); *Students of Cal. School for the Blind v. Honig*, 736 F.2d 538 (9th Cir. 1984); *Barnes v. Cohen*, 749 F.2d 1009 (3rd Cir. 1984).

In arguing that the presence of "state prisoners" impacts on the City system, respondents imply that absent a federal court order, City officials will be at the mercy of State officials, who will then house "state prisoners" in the City system indefinitely. Respondent City Officials' Brief at 36-39, 55; Respondent Pre-trial Detainees' Brief at 25-26. This conveniently ignores the fact the the City is perfectly free to go to state court, as have other localities, for an adjudication of its responsibilities. Requiring a State court to determine the extent of petitioners' obligations under State law in no way detracts from respondents' constitutional rights.[3] *Pennhurst*.

It is not a sufficient basis for ordering relief against a state official that his actions impact on a local official's ability to comply with a federal court order. For example, until the New York Court of Appeals recently held that the responsibility for housing alleged parole violators "unambiguously" belongs to localities, *County of Nassau v. Cuomo*, ____ N.Y.2d ____ (1987), petitioner Coughlin had been forced by New York City to house over 700 alleged parole violators. Certainly, respondent City officials will be burdened in making provision for these individuals.[4] However, the responsibility is theirs and, therefore, the City officials must make provision for them. Any failure of the City to make provision for them can not transform that local responsibility into a state responsibility. So too, where New York law does not require that the State accept custody of state sentenced inmates within forty-eight hours, *County of Nassau*

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[3] This Court has long recognized, in applying the abstention doctrine, that it is preferable to leave determinations of State law to State courts, thus avoiding misunderstandings of local law, needless conflict with State policy and extensive federal intrusion into State programs. *Pennhurst*, 465 U.S. at 122, n. 32; *Burford v. Sun Oil Co.*, 319 U.S. 315, 327 (1943); *Railroad Commission v. Pullman*, 312 U.S. 496 (1941).

[4] This is not to say that petitioners concede that but for the presence of state sentenced inmates, the City would have no difficulty in meeting its obligations. Given the district court's repeated findings that the City has been unable to manage its system, it is clear that it is not lack of space alone which is the problem. *Benjamin v. Malcolm*, 562 F. Supp. 668 (S.D.N.Y. 1983); 495 F. Supp. 1357 (S.D.N.Y. 1980).

v. Cuomo, 121 A.D.2d 428 (2d Dept. 1986), *aff'd*, ____ N.Y.2d ____ (1987); *County of Onondaga v. New York State Department of Correctional Services*, 97 A.D.2d 957 (4th Dept. 1983), *aff'd*, 62 N.Y.2d 826 (1984), the failure of the City to make provision for those inmates does not create a State responsibility. It is the City's failure to make provision for these inmates, not the State action, which creates the City's difficulties.

All respondents argue that it is the All Writs Act which supplies the basis for jurisdiction. However, none responds to petitioners' argument that the there is no Congressional intent expressed in the All Writs Act which would overcome petitioners' Eleventh Amendment immunity. Respondents also ignore the substantive requirements set forth by this Court for invoking the Act. Specifically, respondents ignore the requirements that the burden on a third-party be meagre, that there be no recourse but resort to the third-party, and that the Act be the sole source of authority for obtaining relief against the third-party. *United States v. New York Telephone Co.*, 434 U.S. 159 (1977). As for the requirement that the Act not be used as a substitute for a finding of liability, *General Building Contractors Association, Inc. v. Pennsylvania*, 458 U.S. 375 (1982), respondents argue that the relief ordered against petitioners is not equivalent to the kind of remedy that a liable third-party assumes after an adjudication of fault. Respondent Pre-trial Detainees' Brief at 48, n. 15. In fact, no more extensive an order could be entered were it found that petitioners' actions were violating respondent pre-trial detainees' rights.[5]

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[5] Respondent pre-trial detainees also argue that ancillary jurisdiction provides a basis for the forty-eight hour order. However, this Court has rejected the argument that ancillary jurisdiction overcomes the Eleventh Amendment bar to orders directed against state officials based on state law, *Pennhurst*, 465 U.S. at 121, n. 31, or that ancillary jurisdiction provides a basis for bringing in pendent parties. *Aldinger v. Howard*, 427 U.S. 1 (1976).

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: New York, New York
February 25, 1987

Respectfully submitted,

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